

**Communications Workers of America, Local 13000,  
AFL-CIO and Bernadette Moyer.** Case 4-CA-  
25264

September 30, 1998

**DECISION AND ORDER**

BY MEMBERS FOX, HURTGEN, AND BRAME

On November 25, 1997, Administrative Law Judge Nancy M. Sherman issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.<sup>2</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Communications Workers of America, Local 13000, AFL-CIO, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

*Richard Heller, Esq.*, for the General Counsel.

*Richard H. Markowitz, Esq.*, of Philadelphia, Pennsylvania, for Respondent.

**DECISION**

**STATEMENT OF THE CASE**

NANCY M. SHERMAN, Administrative Law Judge. This case was heard before me on May 14 and 15, 1997, in Philadelphia, Pennsylvania, pursuant to a charge filed by Bernadette Moyer, an individual, on September 16, 1996, and amended on February 13, 1997, against Respondent Communications Workers of America, Local 13000, AFL-CIO; and a complaint issued on February 14, 1997. The complaint alleges that Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act, as amended (the Act) by suspending the pay of Respondent's employee Moyer, and thereafter discharging her, because

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> In adopting the judge's finding of antiunion animus on the part of the Respondent, we rely solely on the statement by the Respondent's president to his fellow executives that no one was going to "embarrass" the Respondent by joining a union and his identifying employee Moyer as the "driving force" behind efforts to unionize the Respondent's employees. We do not rely on the statements by the Respondent's president that the employees supporting a union were wrong to think that a union would automatically get them the same benefits that Respondent's members received and that they would have to "earn" those benefits. See *Carry Companies of Illinois, Inc. v. NLRB*, 30 F.3d 922 (7th Cir. 1994); *Holo-Krome v. NLRB*, 907 F.2d 1343 (2d Cir. 1990).

of her activity on behalf of the Office and Professional Employees International Union, Local 14-32, AFL-CIO (the OPEIU).

On the basis of the entire record, including the demeanor of the witnesses, and after due consideration of the briefs filed by counsel for the General Counsel (the General Counsel) and Respondent, I hereby make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

Respondent, a labor organization, is an unincorporated association with offices in Philadelphia, Pennsylvania. It is engaged in representing employees in bargaining with employers with respect to wages, hours, and other terms and conditions of employment. Respondent receives more than \$2.4 million annually from its parent organization, Communications Workers of America, AFL-CIO, whose headquarters are in Washington, D.C. These payments partly consist of 60 percent of dues paid by Respondent's members, which dues are transmitted by the members' employers, pursuant to checkoff authorizations, to Respondent's parent organization. I find that, as Respondent admits, Respondent is engaged in commerce within the meaning of the Act, and that assertion of jurisdiction over its operations will effectuate the policies of the Act.

**II. THE STATUS OF THE OPEIU**

The OPEIU is a labor organization within the meaning of the Act.

**III. THE ALLEGED UNFAIR LABOR PRACTICES**

**A. Moyer's Activity on Behalf of the OPEIU**

As discussed in greater detail *infra*, at all relevant times until her August 1996 discharge Moyer was in Respondent's employ as a secretary in Respondent's Philadelphia, Pennsylvania offices. About October 1995, Moyer was approached by Diane Willer Gormley (the secretary to Patricia Maisano, Respondent's secretary-treasurer), with the idea of organizing the staff. After Moyer and Gormley had obtained the support of a third secretary, Maria Weber, Gormley telephoned the OPEIU. A week or so later, these three secretaries met with an OPEIU representative in a tavern around the corner from the employees' work location. At this meeting, the employees expressed their workplace concerns and signed "intent cards" for the OPEIU, and the OPEIU representative suggested that the employees get in touch with the rest of Respondent's secretaries and arrange for a second, more inclusive meeting. This second meeting, held in November 1995, was attended by secretaries Moyer, Gormley, Gerry Sauer (the secretary to Joseph V. Clinton, Respondent's president), Cathy McDowell (the secretary to East Region Vice President Edward Carr), and Patricia Mitchell, but not Weber, who was on maternity leave.<sup>1</sup> At this meeting, employees relayed their concerns to the OPEIU representative and he distributed more "intent" cards, but no additional employees signed these (see *infra* fn. 2). McDowell, who did not sign an OPEIU card during the organizing drive which began in 1995, told the others present that she had recently signed cards to become an associate member of Respondent. Because the secretaries who were campaigning for the OPEIU

<sup>1</sup> Mitchell worked mostly for Carr, and Weber to some extent worked for him.

had told the solicited employees that the campaigners wanted to send off authorization cards as a group, Moyer signed an additional OPEIU card after signing a card at the initial meeting.<sup>2</sup> Perhaps for similar reasons, in about November or December 1995 Moyer induced Weber to sign a second OPEIU card. Employee discussions about attending an OPEIU meeting occurred in the presence of Carr, Respondent's vice president of the Eastern Region.

Respondent's offices were located on the second and third floor of the building. The offices of President Clinton, Executive Vice President James Carter, and Secretary-Treasurer Maisano were located on the third floor, where secretaries Sauer and Gormley also worked. The offices of Regional Vice Presidents Carr and Joseph J. Gallagher were located on the second floor, where Moyer, Weber, McDowell, and Mitchell also worked. The employee lunchroom, which was sometimes used by management as well, was located on the second floor. After the initial meeting with the OPEIU representative in about October 1995, all of the secretaries in the Philadelphia office began to discuss the OPEIU during lunch and breaks. At one point, all of the secretaries who had not signed OPEIU cards were eating their lunch in the conference room, and those who signed OPEIU cards were eating in the lunchroom. At another point, remarks by Sauer and then McDowell, to the effect that the employees did not need a union and unionization would cause them to lose pay and benefits, led Moyer to leave the building during lunch. At some time in the fall of 1995, McDowell, Sauer, and (perhaps) Mitchell unsuccessfully attempted to induce Moyer and others to obtain associate memberships in Respondent rather than to join the OPEIU. Through the first few months of 1996, Moyer made sporadic efforts to induce her fellow employees to join the OPEIU.<sup>3</sup> However, so far as the record shows, a majority of Respondent's secretaries never did sign authorization cards. Because of the diverse opinions among the employees regarding the desirability of OPEIU representation, interemployee tensions arose which had not been there before, and the anti-OPEIU employees were shunning the pro-OPEIU employees until at least March 1996.<sup>4</sup>

<sup>2</sup> It is clear from the record that she signed a card for the OPEIU during the October meeting, and another card several weeks later. The record contains a card which she signed on December 4. It is unclear from the record whether in November 1995 she signed a card in addition to her October and December cards, or whether her testimony erroneously attached a November date to the card dated December 4, 1995. The matter is immaterial.

<sup>3</sup> This finding is based on Moyer's testimony. However, at one point she described a mid to late November conversation with Independent Region Vice President Gallagher about organizing as having occurred "very late in the game. . . . Much after intent cards were signed and things like that."

<sup>4</sup> This finding is based upon the testimony of Weber (who, however, was on maternity leave between January 20, 1996, and late February 1996, and also between early October and mid-December 1995) and Moyer. For demeanor reasons, to the extent inconsistent with these findings, I do not credit McDowell's testimony that she did not remember any pro-OPEIU statements by Moyer other than those she made when inviting employees to attend the second OPEIU meeting. McDowell's testimony that after this meeting there was no discussion among the secretaries about the OPEIU at any time, or her testimony that during the first 6 months of 1996 the "usual" social relationships existed among the secretaries, including Moyer.

#### *B. The Alleged Reactions of Respondent's President and East Region Vice President to the OPEIU's Organizing Campaign*

As previously noted, employee Sauer spoke against the OPEIU; so far as the record shows, she never signed an "intent card." Clinton, Respondent's president, testified without contradiction or corroboration to the following effect: On a date he was not asked to give, Sauer, who was his secretary, said that "they were looking at joining the union," and asked for his thoughts on it. Clinton said that it was a good idea, but that the matter was up to her and the "employee body."

A meeting of Respondent's executive board, held on November 8, 1995, was attended by Clinton, Gallagher, Carr, Maisano, and Carter. As discussed in detail *infra*, at all relevant times until May 1996, Gallagher was Moyer's immediate supervisor. Gallagher entered the room before the meeting was called to order.<sup>5</sup> When he came in, he heard Clinton, Carr, and perhaps others engaging in a conversation from which Gallagher inferred that the secretaries were talking about trying to organize a union. Gallagher asked when this had started. Clinton said, "Yeah, like you don't know, your secretary is the driving force." Gallagher said that this was the first he had heard of it, that he knew nothing about it. Clinton said, "[Y]ou know, this is another time that they want to try and have a Union<sup>6</sup> . . . these people should realize that they think that because we treat them under the Bell contract that they have the same working conditions and all under the Bell contract [see *infra*]. They think they are automatically going to get these [. They] are not. You know, we have bargained this contract for years and the Union is not just going to walk in here and get this contract for them."

After the meeting had been called to order, and various subjects had been discussed, the subject of Christmas bonuses for Respondent's employees came up. Clinton moved that "our secretaries" receive a \$150 Christmas bonus, and Gallagher seconded that motion. Carr went into what Gallagher testified as "a tirade directed at me." Carr said that in 35 years of combined service for Bell and for Respondent, he had never had a Christmas bonus or a Christmas party. Carr said that "These people are constantly complaining that they want to go to more than one party . . . and if they think that this kind of stuff is going to happen when the Union comes in here, it's not . . . we're not going to tolerate this. We also are not going to tolerate people being out sick on Mondays and Fridays, people talking on the phone all day, people leaving early . . . they're going to have to earn what we have with the Bell contract. They're just not going to get that." Gallagher said, "[W]hy are you talking to me? I'm not trying to organize a union." Carr said, ". . . we know that your secretary is behind it and she is the driving force." A little later, Carter asked Gallagher where he started when he was bargaining with a newly organized company about a new contract. During the subsequent discussions, Gallagher asked, "[W]hy wouldn't we want [the secretaries] to join a Union? . . . it would be easier for us to deal with problems that come up in there if we had a Union." At this point, Clinton said that nobody was going to "embarrass" the

<sup>5</sup> This finding is based on Clinton's testimony. Gallagher testified that he did not remember whether the call to order issued before or after the conversation described in the text.

<sup>6</sup> Unionization campaigns had been conducted among Respondent's clerical employees in 1988 and in 1990 or 1991. At least during the 1988 campaign, Moyer had refused to sign an authorization card.

executive board by trying to join a union. Then, he reiterated that “if these people think that they are going to get the Bell contract it’s just not going to happen.”<sup>7</sup>

My findings as to Clinton’s remarks on this occasion are based on Gallagher’s testimony. Clinton testified that during this November 1995 meeting, one member of the executive board, whom Clinton was not asked to identify, said that union representation of the secretaries would be good, and that the “general discussion was that nobody had a problem with it, if that’s what they wanted.” As to what happened just before and during this November 1995 meeting, Clinton denied, in effect, that Gallagher initially claimed ignorance of the secretaries’ organizational activity; denied telling Gallagher that his secretary was the driving force behind the organizing drive; denied saying that no one should embarrass the executive board by trying to join a union; denied saying that the secretaries would not get a Bell contract; and denied saying that Respondent wanted to have a union under the Bell contract, not the same working conditions as the Bell contract. (There is no testimony attributing this last remark to Clinton during this meeting.) Clinton testified that he did not recall that Gallagher asked when the organizing had started. Clinton further testified that he did not hear Carter tell Gallagher that his secretary was behind the organizing drive; Gallagher’s testimony attributed this remark to Carr, not Carter. Carter was called by Respondent as a witness, and at that time was still on Respondent’s executive board, but he was not asked about these discussions. Maisano and Carr were not called as witnesses, although at the time of the hearing they were still on Respondent’s executive board and although Gallagher testified that Carr was already in the room when Gallagher entered. I infer that if asked about these discussions, Carter, Maisano, and Carr would not have corroborated Clinton’s version.<sup>8</sup> In view of this absence of corroboration, because it is uncontradicted that Clinton made somewhat similar remarks during the February 1996 executive-board meeting (see *infra* fns. 11 and 13 and attached text), and after considering the witnesses’ demeanor, I credit Gallagher notwithstanding his admission that his prehearing affidavit mistakenly attached these discussions to the December 1995 executive-board meeting rather than to the November 1995 meeting,<sup>9</sup> and notwithstanding the fact that when he testified, he was competing with Clinton for the office of Respondent’s president (see *infra* part III,H) and was having a dispute with Respondent about his salary (see *infra* fn. 12).

After this meeting, Gallagher called Moyer into his office. He told her that he had “kind of gotten ambushed” at this meet-

ing, and asked her whether an organizing drive was going on. She reluctantly said that there was.<sup>10</sup>

The February 14–15, 1996, executive-board meeting was attended by the entire executive board, including Gallagher, Clinton, Carter, Maisano, and Carr. Among the subjects discussed at this meeting was paid maternity leave for employee Weber, who had been in the hospital for a week before the November 2, 1995, birth of her premature baby son by Caesarean section and who, after returning to work about December 11, 1995, had taken 6 more weeks of leave beginning when her baby came home from the hospital on January 20, 1996, at which time he was still on oxygen. Under Respondent’s then collective-bargaining agreement with Bell Atlantic, Bell Atlantic’s employees were at least ordinarily entitled to 6 weeks’ paid maternity leave. During the executive board meeting, Gallagher said that he had been told by Bell Atlantic and AT&T management that if Weber were employed by them under their respective bargaining agreements with Respondent, in view of the unusual circumstances presented they would start her 6 weeks’ paid maternity leave when the baby came home from the hospital, and that Gallagher thought that Respondent’s employees were paid and treated as if they were covered by the Bell contract. Gallagher moved that she receive 6 weeks’ paid maternity leave beginning from her baby’s leaving the hospital—a motion which, if approved, would have given her 12 weeks’ paid leave (not charged to vacation pay) beginning with the date, a week before giving birth, when she first entered the hospital. Nobody seconded the motion. Clinton said, “. . . here they want a Union and these are the kind of things, you know, we’re good to these people. We treat these people fairly, we pay them a good wage and now they want what the Bell contract says . . . if these people [think] that they are going to get a Union they are not going to get these kinds of benefits.”<sup>11</sup> Weber received 6 weeks’ paid maternity leave, beginning with her hospitalization, and 3 weeks’ vacation pay, beginning with when her baby left the hospital; the rest of her absence was unpaid.

Prior to this meeting, in response to a request by secretary Gormley that Respondent reimburse her for the tuition she had paid to a local community college for a mathematics course, Gallagher had told her that he could not remember that Respondent had ever reimbursed any employee for such tuition, but because employees received reimbursement under the Bell contract, he thought she was entitled to it also. At the December 1995 executive-board meeting, Gallagher proposed such reimbursement. After some discussion, the board agreed that she would be paid after a tuition reimbursement plan was established.<sup>12</sup> Shortly after this discussion, Clinton remarked,

<sup>7</sup> Because the answer does not deny the complaint allegation that Carr and Clinton were Respondent’s supervisors and agents at all material times, I find that they occupied that status. See Sec. 102.20 of the Board’s Rules and Regulations.

<sup>8</sup> See *Ready Mixed Concrete Co. v. NLRB*, 81 F.3d 1546, 1552 (10th Cir. 1996); *International Automated Machines*, 285 NLRB 1122 (1987), *enfd.* 861 F.2d 720 (6th Cir. 1988); *Champion Rivet Co.*, 314 NLRB 1097, 1098 fn. 8 (1994).

<sup>9</sup> Gallagher has been without access to his records because Respondent has locked him out of his old office (see *infra* Part III H). When preparing his prehearing affidavit, he recalled that the discussion about the organizing campaign occurred during the same meeting as the discussion about Christmas bonuses, which bonus discussion he had “automatically put” as occurring during the December 14, 1995 meeting. About two weeks before the May 1997 hearing, he advised the General Counsel about Gallagher’s error as to the date.

<sup>10</sup> My findings in this paragraph are based on Gallagher’s testimony. Because I believe he had a better recollection than she as to this meeting, I accept his testimony that it was initiated by him, notwithstanding her testimony that “I believe” she initiated it.

<sup>11</sup> My findings in this sentence are based on Gallagher’s uncontradicted testimony.

<sup>12</sup> On an undisclosed subsequent date, Gallagher was given the assignment, which he never carried out, of preparing a tuition-reimbursement program for Respondent’s employees. After Respondent’s convention during the last week in May 1996, during which Gallagher’s position was abolished although he remained an employee of Respondent until the November 1996 end of his term (see *infra* part III,C), he went on a two-week vacation for which he was paid by AT&T—inferentially, his employer before he assumed full-time paid union office. After his return from vacation, he attended grievance meetings with AT&T (for which AT&T paid him), and worked in

“[T]hey want a Union, they are not automatically going to get these kinds of things. These are kinds of things that they have to work for.”<sup>13</sup> Gormley received tuition reimbursement (totaling about \$843) in May and July 1996 and January 1997.

As previously noted, both Gormley and Weber signed cards for the OPEIU in the fall of 1995. The record fails to show whether Respondent knew that they had done so.

*C. Respondent's May 1996 Convention;  
the Subsequent Reorganization*

At all relevant times until May 1996, Respondent was administratively divided into three regions, each headed by a vice president—the BOC (an acronym for the Bell Operating Company) East, the BOC West, and the Independent. During the existence of the Independent Region, the vice president for that region was Gallagher. At all relevant times between her February 1987 hire by Respondent and May 28, 1996, Moyer worked in Respondent's Philadelphia office as Gallagher's administrative assistant and secretary. During this period, her duties included receiving grievance paperwork, making sure that it was in order and properly signed, typing the cover letter, and making sure that the grievance was processed in timely fashion and got to the next level within the time limits; handling membership records and mailings to the membership; getting information out to the bulletin boards in members' various work locations; making travel and meeting arrangements for Gallagher and his unit presidents; filing and archiving records; tracking vouchers; answering and forwarding telephone calls, including calls from members to unit presidents who were absent from their offices; helping Gallagher and the unit presidents in coordinating grievance and major contract settlements; organizing and disbursing settlement checks; mailings to the membership regarding membership meetings; setting up such meetings; setting up Gallagher's regional council meetings; regular copying and mailing; giving out information (including picket schedules) to members during strikes or threatened strikes; performing administrative paperwork during contract negotiations; arranging meetings between Gallagher and employer representatives; handling problems which the staff had with their computers and with other machines and systems; answering inquiries from the membership; and making personal phone calls for Gallagher. Almost all of her work was performed for the Independent Region.

During the week of May 22, 1996, Respondent's convention amended Respondent's constitution to abolish the Independent Region (by far the smallest of the three), to transfer the member employees from that Region to BOC East (renamed the Eastern Region) or BOC West (renamed the Western Region), and to abolish the office of vice president of the independent Region, then held by Gallagher. No contention is made that this reor-

ganization was motivated by unlawful considerations. In March 1996, when the rules committee was setting up the agenda for the convention, unit 27 president, Frank LaVanga, who was chairman of that committee and was aware of the OPEIU's organizing drive among Respondent's secretaries, sought to include on the agenda the unionization of the staff, but this proposal was rejected by committee members Mike Wharton and Al Rupert. Clinton was an ex officio member of this committee, and was present during the vote on LaVanga's proposal, but did not vote thereon. Thereafter, during the convention itself, LaVanga stated from the convention floor that the executive board should encourage unionization of its employees, and that it did not “look good” for Respondent to have a non-union staff. In response, Clinton stated that the executive board had never had any objections to the staff's “becoming Union. That's their choice . . . that's the way we want it. . . . We have no right as employers to interfere in their self-determination on whether or not they become Union or stay nonunion. That's up to them. If there's any implication that this Executive Board has discouraged or tried to work against our staff becoming Union, . . . I don't want this body to be left with that impression. That's absolutely not true.”

At the hearing before me, Clinton testified that the executive board would do nothing to obstruct its staff's joining a union; that if a majority signed authorization cards, the board would “give them some recognition” and negotiate a contract; and that he would prefer that Respondent's staff be in a union.

*D. Moyer's Absence on Claim of Health Reasons*

*1. Background*

At all times relevant here, Moyer's brother, Daniel Sickman, was a unit president within Respondent's organization. On a date prior to November 8, 1995, Gallagher persuaded Respondent's executive board that in order to avoid or counteract the effects of perceived “skullduggery” within a national group which was called “PT Phone Home” and (inferentially) was somehow associated with Respondent's parent affiliate and/or sister locals, Respondent should engage on the local level in certain activities—namely, permitting disabled veterans to call their homes from Veterans' Administration hospitals—which PT Phone Home had ostensibly set out to do. This local effort was headed by Gallagher and Sickman, and Moyer performed all the clerical support work with Respondent's computers, space, and time. After developing the suspicion that Phone Home was not really seeking its announced purpose, Respondent's executive board stated that Phone Home could continue its operations if three members of Respondent's executive board were put on Phone Home's executive board. Although Gallagher agreed to this arrangement, Phone Home never carried it out, and eventually, Respondent withdrew its financial support. Thereafter, Clinton instructed Moyer to stop participating in Phone Home and to clear its records from Respondent's computer. Clinton testified to the suspicion that she delayed in complying with these instructions. Moreover, in mid-July 1996 she attended (as a spectator) a golf tournament for which she had arranged in connection with Phone Home. Nevertheless, for demeanor reasons I credit Moyer's testimony that she stopped performing work on the Phone Home project when she was so instructed in early 1996.

Respondent's office. Gallagher was directed by Clinton to report to the union office for assignment in July 1996, but did not do so. Gallagher was paid by Respondent for April 1996 and for July or August 1996, but not for any other periods after April 1996. He was locked out of his office on a date not clear in the record, but inferentially no later than the expiration of his term of office as vice president in November 1996. At the time of the hearing in May 1997, a dispute was pending between him and Respondent about how much (if any) remaining salary he was entitled to receive from the Union, at least partly because of the payments made to him by AT&T. Such events have been taken into account in assessing his credibility as a witness.

<sup>13</sup> My findings as to these remarks by Clinton are based on Gallagher's uncontradicted testimony.

## 2. May 28, 1996, changes in Moyer's job duties

On May 28, 1996, the next work day following the convention, Clinton, Carter, and Maisano met with Weber (who had been working part of her work week under Gallagher's supervision) and Moyer. Clinton said that the Independent Region had been abolished, and that a lot of the work which Moyer and Weber had been performing in Respondent's Philadelphia office would eventually be moved to Respondent's Pittsburgh office. He went on to say that initially during the transition period, Moyer and Weber would be doing the same work as before, under Carter's direct supervision. Eventually, Clinton said, Moyer and Weber would be assimilated into the Eastern Region and would probably be directly supervised by Carr; and McDowell, Carr's secretary, would be instructed to give them work in connection with that region "as time ensued." Clinton said that all the secretaries would have a job and they should not worry about that; and that Weber and Moyer might be expected to take on additional responsibility. Clinton said that he recognized this was a sensitive period for Weber and Moyer; that he recognized the "long loyalty" Moyer had for Gallagher and the two secretaries' allegiance to Gallagher and Sickman; that Clinton knew Sickman was kin to Moyer; but that this allegiance to Gallagher and Sickman had to stop now. Clinton further said that Gallagher was no longer an executive board member; that Moyer and Weber were not to work for him any longer unless they were so instructed by the executive board; that Moyer was not to work for Phone Home; and that the secretaries' loyalty was to the committee and the membership, and Respondent as an institution. During this meeting, nothing was said, at least in terms, about organizing or about a union. Neither Moyer nor Weber appeared to be upset.<sup>14</sup> After the meeting broke up, Carter told Weber and Moyer that he expected them to continue to perform the same work that they had previously performed.

On an undisclosed date after the dissolution of the Independent Region, Carter told McDowell (who generally assigned work on the second floor, where Weber and Moyer worked) that Weber (who had spent half her time working for the Independent Region and half for the Eastern Region) and Moyer would be doing work for the Regions left in Philadelphia the same work which they had been doing, and would be working with McDowell and Mitchell,<sup>15</sup> both of whom had been doing work for the Eastern Region.<sup>15</sup>

## 3. Events during and after the transition

During the month of June 1996, Moyer was not assigned any work. She continued to handle members' telephoned inquiries (whose volume was a little higher than usual, but most of which she could not answer), continued to answer the telephone, reorganized her file system, archived some old files, and performed one "mobilization" (a special effort to keep members informed of strike and other significant activity). On four or five occa-

sions during this period, she suggested to Carter that she perform various tasks which she believed might help smooth the transition; on each such occasion, he said that he would talk to Clinton and then get back to her, but she was never asked to perform any of the tasks which she had offered to perform.

From the time of her hire in February 1987 until June 1996, Moyer had enjoyed her job immensely. She had enjoyed her responsibilities and everything she did, and had felt strongly about her job and about the services that she provided to the membership. She had been raised to do the best that she could at her job, and to believe that if she did not like her job, she should get another which she did enjoy and obtain satisfaction from. Moyer credibly testified to the belief that during June 1996, "hardly anybody at work spoke to me except for my friends."<sup>16</sup> I had no interaction . . . with anyone on the executive board with the exception of some small, short conversations with Mr. Carter. I really had nothing to do but busy work . . . I'm just not someone who can sit there and not do anything. I'm not someone who can accept payment from somebody for doing nothing. I felt at that point they were hanging me out to dry and . . . they severed me away from everybody and I was being belittled and I was being discriminated against and I was being made to feel like nothing." She credibly testified that during June 1996 she did not know whether Respondent was trying to force her out or fire her; that she lost 10 pounds and got to the point where she was able to fall asleep (if at all) only an hour or so before she had to get up; and that she and her husband "were having a lot of argumentative problems because he knew what was happening to [her] at work and he didn't want [her] to have to go through that." She began having trouble getting up early enough to arrive at her office on time, and during the last week in June was getting to work 15 or 20 minutes late. Weber credibly testified that during the month after Moyer had been advised of the changes in her duties, she looked depressed and sad, and wept from time to time.<sup>17</sup>

On June 27, Moyer, who was visibly upset, came to McDowell and said that Moyer thought Respondent was trying to get rid of her. McDowell said that she believed this was not true, that there was plenty of work there for everybody to do. Moyer asked McDowell whether she had complained to the executive board about Moyer's being late. McDowell said that she would never complain about such conduct to an executive board member, but that some of the secretaries did get upset when other secretaries came in late, left early, took excessively long lunch periods, and were on the telephone all day. Moyer said that if she was going to be forced into a position where she had no more responsibilities, she was not going to sit in the "break room" and stuff envelopes all day. McDowell said that stuffing envelopes was part of all the secretaries' jobs, but that was not the only thing Moyer was going to do.

On Friday, June 28, Moyer felt that she was at the end of her rope, that she had tried as hard as she could to go to work, and

<sup>14</sup> My findings as to this meeting are based on a composite of credible parts of the testimony of Moyer, Carter, and Clinton. The General Counsel's witness Weber was still in Respondent's employ when she testified, and was not asked about this conversation. I accept Clinton's and Carter's denial of Moyer's testimony that Clinton said in terms that there was a "perception out there" that Moyer and Weber were disloyal and not to be trusted.

<sup>15</sup> My findings as to this conversation are based on McDowell's testimony. For demeanor reasons, I do not credit what at least arguably amounts to a denial by Carter.

<sup>16</sup> McDowell testified, in effect, that this was not true. Moreover, in May or June 1996, Moyer attended as a volunteer spectator a golf tournament sponsored by Respondent and, in accordance with prior practice, breakfasted with all the other clerical employees before the tournament began. However, whether Moyer was correct in her perceptions about being ignored by her associates is immaterial to the case at bar.

<sup>17</sup> For demeanor reasons, I do not credit McDowell's testimony that during the month of June 1996 and before June 27, she noticed no physical or emotional changes in Moyer, and that Moyer appeared to be exactly the same as she had always been.

that she could not walk in the office door again. That morning, she telephoned Carter that she was not feeling well and was going to need the day off. He told her, "... okay, take care of yourself and keep us informed." On the next business day—Monday, July 1—she again telephoned Carter that she was sick. When he asked what was wrong, she said that she was not feeling well, and was having trouble sleeping and eating.<sup>18</sup> On the following day, July 2, she again telephoned Carter, who asked how she was feeling. She said that she was not feeling much better, and that she thought she should make an appointment to see her doctor. Carter said that this would probably be a good idea.

Moyer's health insurance coverage, which she enjoyed by virtue of Respondent's collective-bargaining agreement with her husband's employer (Bell Atlantic), required her to use a health maintenance organization, Conshohocken Family Medicine (CFM). She telephoned CFM on July 2, but was told by the receptionist that she could not obtain a doctor's appointment until July 8. Later that same day, July 2, Moyer telephoned Carter that she had been having trouble getting a doctor's appointment because of the July 4 holiday, and that she had obtained an appointment for July 8. Carter said that this was good, and asked her to call and let him know how she had made out with that appointment. Also, he suggested that she should get a doctor's note; but he did not tell her that she needed to submit a doctor's note, did not say whom she was supposed to give it to, and never asked her to give him one.<sup>19</sup>

On the morning of July 8, Moyer had a half-hour consultation with Dr. Rita Mancini, the physician with whom CFM had set up Moyer's appointment. As a result of that consultation, Dr. Mancini suggested that Moyer not return to work at that time, and that she seek counseling. Dr. Mancini said that her office would telephone a referral to Corporate Health Administrators (CHA), and that CHA would telephone Moyer later that day.

Moyer told Dr. Mancini that Moyer had not been working since June 28. Dr. Mancini asked Moyer if she needed a doctor's note. Moyer said that if Dr. Mancini wanted to write a note, that was "fine," but that Moyer "had never been asked for one before."<sup>20</sup> Dr. Mancini said that she would give Moyer something that would take her from this office visit through the time that Moyer would be able to have an appointment with the therapist that CHA would refer her to. Dr. Mancini said that this was by no means a note saying when Moyer could go back to work, but that it was a note to fill in this gap. Dr. Mancini said that once Moyer saw the therapist, the therapist would be responsible for any time that Moyer was off, because Dr. Mancini was not a therapist. Dr. Mancini said that Moyer's problem "was a counseling problem not from what she could tell prior to blood tests it was not a medical problem." The form which Dr. Mancini gave Moyer bears what appears to be Dr. Mancini's authorized signature and her telephone number. Below the

low the printed caption "Certificate to return to work," the form includes the following (handwritten portions underscored): "Name *Bernadette Moyer*/has been under my care from 7-8-96 to [blank not filled in] and will be able to return to work on 7-16-96." Moyer never showed Respondent this note, and there is no evidence that Respondent saw it at any material time. Dr. Mancini also arranged for Moyer to have some "blood work" done that same morning. Later that day, a CHA representative and Moyer went over a list of "participating therapists" in the area. On the basis of the "closest one," they selected an organization referred to in the record as "Spectrum"; the "actual person" whom Moyer was to contact was Laurie Kennedy, whose title is "clinical social worker." Moyer set up an appointment with Kennedy for July 11.

After setting up this appointment and before July 11, Moyer telephoned Carter that she had been referred to a therapist and her appointment was for July 11. She asked if it was necessary that she call him prior to that; he said no. Moyer said that her doctor, Dr. Mancini, had said that at least until the time that Moyer spoke with the therapist, Moyer should not return to work. Carter said, "[F]ine, keep me posted."

Moyer had a 1-hour consultation with Kennedy on July 11. Kennedy told her to come back again on July 18, said that at that point they would go over Moyer's evaluation, and (on the basis of their conversation) strongly advised her not to return to work at that time. Moyer did not ask her for a note. Thereafter, and before meeting with Kennedy on July 18, Moyer telephoned Carter that she would be seeing Kennedy again on July 18, and that at that point Moyer would have more information based on Kennedy's evaluation of Moyer. Carter wished her luck, and asked her to call him following that appointment.<sup>21</sup>

On July 13, Moyer, who does not play golf, attended a golf tournament, which she had participated in setting up in connection with Phone Home, 10 or 15 miles from her home. She arrived at the country club at about 7 a.m., and stayed for a subsequent luncheon and an awards ceremony.

Clinton had been on vacation during a period which ended about midday on July 8. About July 9, Carter told him that Moyer was absent because of alleged illness. Clinton asked what was wrong; Carter gave him a vague answer. About July 16, Clinton asked Carter for an "update" about Moyer. Carter said that he had spoken to her and that she was getting some kind of treatment.<sup>22</sup>

Moyer did not have any daily contact with Clinton in the course of her work. Moreover, Clinton testified that when an employee is absent because of illness, the employee's immediate supervisor—in Moyer's case, Carter—was primarily responsible. However, Clinton testified that during his conversation with Carter about July 16, Clinton told him that Clinton would send Moyer a letter stating that Respondent needed a "doctor's note, a documentation as to why she's off ill." Further, although (aside from the subsequently described letters to Moyer) Clinton had never communicated with any staff people by certified mail, his letter to Moyer was sent by certified mail, return receipt requested. Under date of July 17, 1996, Clinton's letter stated:

<sup>18</sup> My findings as to the content of this conversation are based on Moyer's undisputed testimony. My finding that the conversation occurred on Monday, July 1, is based on the fact that this was the first working day after Friday, June 28. I believe Moyer was mistaken in dating this conversation as June 30, which was a Sunday.

<sup>19</sup> My findings in this sentence are based on Carter's testimony. In view of the probabilities of the case, I accept Carter's denial of Moyer's testimony that, he told her that in order not to set a precedent, she should not show the note to anyone in management unless requested.

<sup>20</sup> The quotation is from Moyer's testimony. Cf. supra fn. 19.

<sup>21</sup> My findings in this and the preceding paragraph are based on Moyer's testimony. For demeanor reasons, I do not credit Carter's testimony that he had no conversations with her during this period. See also, the paragraph attached to fn. 22, infra.

<sup>22</sup> My findings in this paragraph are based on Clinton's testimony. Carter was not asked about this conversation. Cf. supra fn. 21.

You have been absent from work from June 28, 1996 to the present due to a reported illness.

Please acquire a doctor's note concerning your illness providing a detailed statement to me as soon as possible.

Moyer received this letter upon returning from her July 18 appointment with Kennedy. Moyer thereupon contacted Kennedy's office and asked her to forward a letter to Clinton providing a detailed statement as to Moyer's treatment and her condition. On the following day, July 19, Moyer telephoned Respondent's office and asked to speak to Carter. When told he was out of town, Moyer left an oral message that she had received Clinton's letter and her doctor was forwarding the requested information to him.

By handwritten letter to Clinton dated July 19, 1996, with a courtesy copy to Moyer, Kennedy stated, in part, that Moyer had been "involved in psychiatric treatment since July 11, 1996, for the treatment of anxiety associated with perceived work stress. She will continue in treatment [and] is motivated towards treatment until said issues are resolved. Please contact me with any concerns or questions." Kennedy attached to her signature the title "Clinical Social Work" and a telephone number. The letter is written on business stationery with the letterhead "Spectrum/Access Quality Efficiency" and a printed notation at the bottom of the page, "A Partnership of Professional Corporations for Behavioral Health."

Before receiving Kennedy's July 19 letter, Clinton sent Moyer another letter by certified mail, return receipt requested, dated July 23. This letter stated, in part:

In a letter dated July 17, 1996, I asked you to provide this Local with a doctor's explanation of your illness. You have failed to do so. If we don't get a detailed explanation of your illness, we will have to consider appropriate disciplinary action.

On July 24, upon returning home from her grandmother's funeral, Moyer found in her mail box a notice that certified mail was awaiting her at the post office. She went to the post office and picked up Clinton's July 23 letter. She immediately called Respondent's office, where she was connected with Carter. She told Carter that she was upset, had received a letter from Clinton, and wanted to speak with him. Carter said that Clinton was out of town and would not be back until July 30. She said that she did not know whether she should speak to Carter or to Clinton. Carter said that she should probably speak to Clinton, but that she sounded upset, and asked her what was wrong. She explained the circumstances surrounding her receipt of Clinton's July 23 letter, and said that it had threatened her with disciplinary action for something which she had not done. When asked for details, she said that Clinton had asked her to provide him with a note from her doctor, that she had called her doctor the day Moyer had received Clinton's letter, that her doctor had promised her that it would be mailed out the next day, and that Clinton had not given her even a full week to get that letter to him. Carter said that Clinton had never told him about receiving any correspondence from Moyer or her doctor. When Moyer speculated that the two letters may have crossed in the mail, Carter offered to check Clinton's unopened mail to ascertain whether he had received the letter which Kennedy had promised to send him. After putting Moyer on hold, he ascertained that what appeared to be the letter in question was among Clinton's unopened mail. When Carter returned to

the telephone and so advised Moyer, she became rather agitated. She said that she felt she was being harassed, to which Carter replied that she needed to calm down and relax. Moyer said that she had been trying to calm down, but had not been given any opportunity to do so, that "they keep on sending me all these certified letters." Carter said that he knew all this was hard for her in view of her allegiance to Gallagher. Moyer said, "I am sick and tired of hearing and having that shoved down my throat. As far as I am concerned that is a perception of the executive board of why I am upset the executive board has to realize that I am upset based on how they have been treating me." Carter said that he would be seeing Clinton the next day, and asked if it would be all right if Carter were to hand-deliver the unopened letter. She said that she would appreciate Carter's doing this.

Carter hand-delivered the unopened letter in question, which was in fact Kennedy's July 19 letter to Clinton, on July 25 in Hershey, Pennsylvania, where he was attending a union convention. Clinton returned to his Philadelphia office on July 30, and telephoned Kennedy's office. He told her receptionist that he would be faxing Kennedy some material regarding Moyer, including some papers which Moyer was to sign in order to release her medical records. Kennedy was not asked to return his call. The next day, Kennedy asked Moyer whether she would be willing to sign a release of her medical records. The record fails to show whether any definitive reply was given by Moyer, who asked whether the release was being requested for workmen's compensation purposes. Kennedy said that she assumed so but had not received a fax of the paperwork. Kennedy never did receive such a fax, and, so far as she knew, her office received no other calls from Clinton.<sup>23</sup>

By letter to Moyer dated July 31, sent by certified mail with return receipt requested, Clinton stated:

In my letter of July 17, 1996 and my subsequent letter of July 23, 1996, I asked you for verification of your illness, specifically a doctor's diagnosis.

You have chosen not to provide me with such, you have only provided a sketchy letter from a social worker who refuses to return my calls. In fact, you called Vice President Carter when you received your letter on Wednesday, July 24, 1996 and we have not heard from you since.

Therefore, I must insist that you return to work on Friday, August 2, 1996.

Upon receiving this letter at 2 p.m. on Friday, August 2, Moyer telephoned Kennedy and asked her why she had not returned Clinton's telephone calls. Kennedy said that so far as she knew, she had received only one call from Clinton's office,

<sup>23</sup> My findings as to the contacts between Kennedy and Respondent, and as to the absence thereof, are based on Moyer's testimony that she was so advised by Kennedy. Because offered and received without objection or limitation, such testimony is probative of the truth of the matter asserted by the declarant. *Advance Transportation Co.*, 300 NLRB 569, 572 (1990), enf'd. 979 F.2d 569 (7th Cir. 1992); *Today's Man*, 263 NLRB 332 (1982). Because I know of no particular reason why the receptionist would have misrepresented the matter to Kennedy or why Kennedy would have misrepresented the matter to Moyer, because Moyer was generally a more reliable witness than Clinton, and for demeanor reasons, I do not credit Clinton's testimony that on three separate occasions he left word with Kennedy's office for her to call him about Moyer, but Kennedy never returned his calls. See *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962).

and that the person who spoke to Kennedy's receptionist had said Clinton's office would be faxing paperwork to Kennedy which needed to be signed, that the faxes had never been received, and that she had not been asked to return the call from Clinton's office (see *supra* fn. 23).

Then, Moyer telephoned Clinton, who asked her how she was feeling. She said "not too good." He asked her where she was. She said that she was at home and had just received his July 31 letter. She asked whether he really expected her to report to work that day. He said no, but that he did expect her to report to work at 8 a.m. on Monday, August 5. She said that she had been advised by her doctor not to return to work yet "based on the diagnosis." Clinton said that Kennedy's note was unsatisfactory. Moyer said, "... what if I go see a doctor?" He said that this was what he had been asking her to do all along, but that he still wanted her to come into work, and that when she had time to go to the doctor, she would be excused with pay. She asked what to do if she made the doctor's appointment for 8 a.m. He said that she should go to the doctor at 8 a.m. and come in after that. She said that she did not think she could do that. He said that she could not just decide to go off sick whenever she felt like it. She said that this was not a conscious decision she had made, that it was something that had happened. She asked what she should do. He told her that she should come back to work. She said that she could not come back to work at this time. He asked why not. She said that everyone was looking at her and picking on her, and that she had nothing to do. He said that there was plenty to do. She said that he did not understand, that she was used to being in control and in command, and to running her own operation, that she did not do that any more, and she could not handle "just doing stuff around that second floor." Clinton said that she was receiving a pay check, and that if the second floor was bothering her, he would arrange for her to receive work on the third floor (a location which, he testified, is "basically behind closed doors") until he returned from Pittsburgh, where he was scheduled to be on August 5. She said that she was not able to come back and work at that time. He said that Respondent could not provide her with any benefits other than those provided to members under Respondent's bargaining agreement with Bell Atlantic, and that many Bell members underwent counseling daily and reported to work daily. She said that her counseling was due to problems she was having at work, and that she was unable to return. She asked whether there was anything else she could do, and whether he wanted her to see a psychiatrist. He said that all he knew was that he wanted her to come back to work. He said that because she did not have a satisfactory explanation for her absence, she was required to come into work on Monday, and that he would be in Respondent's Pittsburgh office if she needed to speak to him. She said that all she could do was try.<sup>24</sup>

<sup>24</sup> My findings as to this Moyer—Clinton conversation are based on a composite of credible portions of their testimony. Clinton testified at one point that he wanted her to come to work on August 5 so that he could talk to her about the situation, and that "I offered to meet her somewhere else also, it wasn't a question of coming to work." However, he elsewhere testified that this was not his purpose in directing her to come to work on August 5, and he was admittedly going to be out of town on business for a period which included August 5. Accordingly, although Moyer merely testified that she did not "recall" his telling her that he wanted to talk to her, to see her, or to discuss his illness with her, I do not credit the testimony by Clinton summarized in this footnote.

That evening, Moyer telephoned Kennedy. Kennedy advised her not to report for work, and said that because Moyer's health and mental state had deteriorated, she should consult a psychiatrist. Kennedy said that she would arrange for an emergency appointment for Moyer to see one of Spectrum's psychiatrists on Monday, August 5. Moyer never asked Kennedy to refer Moyer to a psychiatrist or to a doctor of any kind.

#### *E. Allegedly Discriminatory Suspension of Moyer's Pay*

Moyer did not report to work on August 5. That morning, she called Kennedy's office to inquire about the appointment with a psychiatrist which Kennedy had promised to set up. Moyer was advised that such an appointment had been set up for 6:15 p.m. that same day, August 5. Then, Moyer telephoned Clinton's Philadelphia office and asked his secretary for his telephone number in Pittsburgh. After being given this information, Moyer asked when he would be expected to be there. His secretary said that he would probably be available about 11 a.m. because he was attending a funeral.

At 11:30, Moyer called the Pittsburgh office, but he was not available. After allowing for lunch time, at 1:30 p.m. Moyer again telephoned the Pittsburgh office. When connected with Clinton, she advised him that she had a 6:15 p.m. appointment with a psychiatrist at Spectrum. Clinton asked where she was; she said that she was at home. He said, "... you didn't report to work this morning?" She said no, she was unable to. Clinton said that he had asked her to report to work that morning and that she had left him with the impression that she would attempt to come in. She said that she was not coming in to work. He said that she was leaving him no choice but to suspend her pay. She said, "I guess you need to do what you need to do, and I need to do what I need to do to get well." He said that her pay was suspended.<sup>25</sup>

Up to that point, Moyer had continued to receive her full salary during the period when she was not reporting to work. After that, she ceased receiving any pay. Respondent has a practice of paying employees when they are out sick, at full pay or (depending on their length of service) at a percentage of their regular pay.

#### *F. Allegedly Discriminatory Discharge*

That evening, Moyer had a one-hour consultation with Donald Levin, M.D., whose office is in the same office complex as Kennedy's office. During this August 5 consultation, she told him that she had been out of work since June 27, but did not show him Clinton's July 31 letter. Dr. Levin diagnosed her as suffering from "major depressive disorder, single episode, severe" (see *infra*), and gave her prescriptions for an antidepressant and a sleeping aid. Dr. Levin advised her not to return to work or to drive while she was on this medication, and told her that she would have to be on this medication for about a month. He told her to keep in touch with him by telephone during that month if she had any problems with the medication or if she needed to discuss any other problems with her employer. An appointment with him was scheduled for about September 3; he did not schedule the appointment for an earlier

<sup>25</sup> My findings as to this Moyer—Clinton conversation are based on a composite of credible portions of their testimony. She testified that he said he was suspending her pay, and he testified to saying that he was suspending her without pay. Because the complaint alleges merely that on that day Respondent suspended her pay, I accept her version for purpose of this Decision.



date because he wanted to allow an adequate time for the medication to work.

A letter to Clinton from Dr. Levin dated August 5 was received by Respondent on August 8. On August 6, Moyer obtained a copy of Dr. Levin's letter. About August 8, she faxed to Respondent a copy of this letter and a covering letter (dated August 7) from her to Respondent, which faxed documents were received by Respondent on August 9. Moyer's covering letter stated:

I have enclosed a copy of my doctor's correspondence I hope that this will meet the requirements set forth in your previous letters. If all goes well, I will be returning to work early next month.

Please contact either myself [or] Dr. Levin if you should have any questions.

Dr. Levin's letter stated that Moyer

is currently under my care for treatment of Major Depressive Disorder Single Episode Severe (DSM IV 296.33). Her current condition renders her temporarily incapable of performing her work responsibilities. It is estimated that with appropriate treatment she may return to work by September 9, 1996.

Inferentially, in citing "DSM IV 296.33," Dr. Levin was referring to a book whose title page reads "Diagnostic and Statistical Manual of Mental Disorders/Fourth Edition/DSM-IV . . . /Published by the/American Psychiatric Association/Washington, D.C.," with a copyright date of 1994.<sup>26</sup> *DSM-IV* sets forth a nomenclature (with an alphabetic and numerical coding system) for mental disorders, which nomenclature is used by, inter alia, psychiatrists and other physicians, psychologists, social workers, occupational and rehabilitation therapists, and counselors (p. xv). It contains a 21-page listing of individual contributors, mostly medical doctors (pp. 851–872). The classification system was developed for use in clinical settings, among others (p. xxiii). *DSM-IV* states, in part (pp. 320–322, 325, 339–342, 375–378):

Major Depressive Disorder is associated with high mortality. Up to 15% of individuals with severe Major Depressive Disorder die by suicide . . . Among individuals seen in general medical settings, those with Major Depressive Disorder have more pain and physical illness and decreased physical, social, and role functioning (p. 340).

Major Depressive Disorder (Single or Recurrent) is twice as common in adolescent and adult females as in adolescent and adult males (p. 341)

<sup>26</sup> The Library of Congress call number for this book is RC 455.2.C4D54. The page immediately following the title page states, inter alia:

DSM and DSM-IV are trademarks of the American Psychiatric Association . . .

The correct citation of this book is American Psychiatric Association; *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Washington, D.C., American Psychiatric Association, 1994.

Prepared by the Task Force on DSM-IV and other committees and work groups of the American Psychiatric Association DSM-IV.

## Major Depressive Disorder

### Diagnostic Features

The essential feature of Major Depressive Disorder is a clinical course that is characterized by one or more Major Depressive Episodes (p. 339)

[Describing the significance of the fourth digit (3) in the numerical classification which Dr. Levin attached to Moyer's illness] recurrent Major Depressive Episodes (p. 340)

[Describing symptoms calling for the fifth digit (3) in the numerical classification which Dr. Levin attached to Moyer's illness:] Episodes that are *Severe without Psychotic Features* are characterized by the presence of most of the criteria symptoms and clear cut, observable disability (e.g., inability to work). (pp. 340, 375–376, emphasis in original)

### Major Depressive Episode

#### Episode Features

The essential feature of a Major Depressive Episode is a period of at least 2 weeks during which there is either depressed mood or the loss of interest or pleasure in nearly all activities. . . . The individual must also experience at least four additional symptoms drawn from a list that includes changes in appetite or weight, sleep, and psychomotor activity; decreased energy; feelings of worthlessness or guilt; difficulty thinking, concentrating, or making decisions; or recurrent thoughts of death or suicidal ideation, plans, or attempts. . . . The symptoms must persist for most of the day, nearly every day, for at least 2 consecutive weeks. The episode must be accompanied by clinically significant distress or impairment in social, occupational, or other important areas of functioning (p. 320)

Appetite is usually reduced, and many individuals feel that they have to force themselves to eat. . . . When appetite changes are severe (in either direction) there may be a significant loss or gain in weight (p. 321)

The most common sleep disturbance associated with a Major Depressive Episode is insomnia (p. 321)

Decreased energy, tiredness, and fatigue are common Even the smallest tasks seem to require substantial effort (p. 321)

it is not possible to predict accurately whether or when a particular individual with depression will attempt suicide (p. 322)

The degree of impairment associated with a Major Depressive Episode varies, but even in mild cases, there must be either clinically significant distress or some interference in social, occupational, or other important areas of functioning. . . . If impairment is severe, the person may lose the ability to function socially or occupationally (p. 322)

#### Course

Symptoms of a Major Depressive Episode usually develop over days to weeks. A prodromal period . . . may last for weeks to months before the onset of a full Major Depressive Episode. The duration of a Major Depressive Episode is also variable. An untreated episode basically lasts 6 months or longer. . . . In a majority of cases, there is a complete remission of symptoms, and functioning returns to the premorbid level (p. 325)

Clinton testified that Dr. Levin's letter "wasn't satisfactory for our needs" because it "didn't describe the type of treatment she was getting [or] how long [she had] been under treatment [or] how long he had seen her. It didn't fit any of the requirements that we have with respect to a long term illness such as this was becoming." Clinton never attempted to contact Dr. Levin. Nor did Clinton speak with any experts in the field of mental health before making the determination that Moyer was capable of returning to work.

By letter to Moyer dated August 8 and sent certified mail, return receipt requested, Clinton stated, in part:

You have been absent from work since June 28, 1996, because of a reputed illness. I wrote to you on July 17, 1996, requesting a doctor's note validating your illness and providing a detailed statement to me. I received a hand written communication from an unidentified concern dated July 19, 1996, which stated that you had been "involved in psychiatric treatments since July 11, 1996, for the treatment of anxiety." This communication is not a doctor's report and certainly does not constitute a medical opinion that you are physically or mentally disabled or unable to perform your regular duties for this Union. I also have a letter dated August 5, 1996, from Donald Levin, M.D., which I do not find to be an acceptable excuse for your failure to be at work since June 28, 1996.

I wrote you again under the dates of July 23, 1996 and July 31, 1996, reiterating my request for a doctor's explanation of your illness. In my last letter to you of July 31, 1996, I requested you to return to work on Friday, August 2, 1996, and you failed to do so.

Therefore, please be advised that unless you return to work on Monday, August 12, 1996, or provide a legitimate medical explanation for your failure to perform your duties for more than a month, this Union will have no alternative but to terminate your employment.

Moyer did not return to work because her doctor had advised her not to, and because the medication which he had prescribed made her unable to drive; she credibly testified that the antidepressant drug called for by her August 5 prescription (which was later changed) turned her into "a zombie for at least a week and a half."<sup>27</sup> A letter to her from Clinton dated August 13, 1996, sent certified mail, return receipt requested, states:

Your employment with this Local is hereby terminated.

You have been absent from work since June 28, 1996. You have been requested on several occasions to provide a doctor's note certifying your illness, and finally, by letter dated August 5, 1996, Dr. Donald Levin wrote to me advising you were under treatment, but failing to state the length of such treatment, the length of your illness and totally failing to justify your absence from employment since June 28, 1996.

By letter dated August 8, 1996, you were advised that you should either report to work on Monday, August 12, 1996, or provide a legitimate medical explanation for your failure to do so since June 28, 1996, and you have not complied with this request.

Therefore, because of your failure to provide a justification for your absence from employment and your failure to notify this office concerning that absence, and because of such absence, your employment is terminated.

Although Dr. Levin had advised Moyer on August 5 to continue to take the medication prescribed by him for about a month, she discontinued taking that medication about a week after receiving her August 13 discharge letter. However, she testified at one point that because of that medication, she was unable to drive for about the whole month of August.<sup>28</sup>

Clinton testified at the hearing that Moyer "was terminated for failure to report to work, for failure to provide the necessary documents to document her illness. For failure to cooperate with . . . the management of the local and for job abandonment basically." He testified that he did not believe her illness was "as serious as she was trying to let on that it was."

Moyer appealed her discharge, inferentially though an internal procedure maintained by Respondent, but was unsuccessful. Although she made no claim that she was disabled for as long as 52 weeks, she claimed to the Union that she should receive 13 weeks of full pay and 39 weeks at half pay, motivated by her belief that she had suffered a disability due to work. So far as the record shows, she received no pay from Respondent for any period after August 5, 1996, when Clinton suspended her sick pay.

#### *G. Respondent's Practice Regarding Doctor's Notes for Absences Allegedly due to Health Reasons*

Before becoming Respondent's president in January 1994, Clinton had served as Respondent's vice president and a member of Respondent's executive board between 1984 and 1992, and thereafter as Respondent's executive vice president. He testified that it was his "understanding" that prior to 1994, staff employees had to bring doctor's notes if they were out for any period of time. He testified that in January or February 1994, he advised the executive board that Respondent tried to give to its employees the same basic benefits that Respondent's membership received under its bargaining agreement with Bell Atlantic, and "reaffirmed" to the executive board, including Gallagher and Carter, that "medical documentation" was required of employees who were out for more than 7 calendar days. Clinton's testimony that he so advised the executive board is wholly uncorroborated. Although Carter, Maisano, and Carr have been on Respondent's executive board at all material times, Maisano and Carr did not testify, and Carter, although called by Respondent as a witness, was not asked about this matter. In view of this absence of direct or even indirect corroboration, and for demeanor reasons, I credit Gallagher's denial that Clinton so advised the executive board; see *supra* footnote 12.

My finding that he did not so advise the executive board is indirectly corroborated by other record evidence. Thus, by his own admission Clinton did not inform the staff about the allegedly "reaffirmed" policy, staff members have never been given a copy nor told that it applies to them, and Respondent does not maintain a copy for the use of the staff (see *infra* fn. 32). Nor had Clinton ever related the alleged doctor's-note policy to

<sup>27</sup> She lives about 2-1/2 miles from the nearest public transportation to Respondent's office. The road is either uphill or unpaved. She did not ask her husband or a friend to drive her down.

<sup>28</sup> As previously noted, Dr. Levin scheduled her second appointment about a month after her first appointment in order to allow an adequate time for her medication to work. The record otherwise fails to show whether her medication interfered with her ability to drive for any period following its discontinuance.

Western Region vice president Jerry Harris, who had become a member of the executive board 4 months before Clinton testified. Furthermore, Respondent did not in practice observe this allegedly "reaffirmed" policy before Clinton became Respondent's president in January 1994. Thus, in 1993 Moyer was absent from work for 2 to 3 weeks because of bronchitis, but was not asked to and did not supply a doctor's note. In 1991 or 1992, employee Weber was absent from work for about 4 weeks because of a broken ankle, but was not asked to and did not supply a doctor's note. Also about 1991 or 1992, former employee Marci Demi was on leave for at least a month due to severe depression, but was not required to bring a doctor's note. In 1989, Moyer was absent from work for about 3 weeks because of foot surgery, but was not asked to and did not supply a doctor's note.<sup>29</sup>

Nor does the record show that after Clinton became Respondent's president in January 1994, Respondent followed the practice of requiring doctor's notes as to all absences exceeding 7 days. Although the record contains all of the doctors' notes which had been submitted by Respondent's employees and were still in Respondent's files in April 1997,<sup>30</sup> only one of these notes involves an absence encompassing more than 7 calendar days.<sup>31</sup> Moreover, since Clinton became president of Respondent, and laying Moyer to one side, no employee has been disciplined, suspended, or discharged for failing to bring a doctor's note or for excessive absenteeism. Nor has any employee except Moyer been suspended or discharged for any reason during this period. In view of the foregoing evidence, and for demeanor reasons, I credit Gallagher's testimony that throughout Clinton's presidency and until Gallagher's tenure as executive vice president ended in November 1996, Respondent did not have a regular and consistent practice of requiring doctor's notes, and that whether such a note would be required depended on the circumstances.<sup>32</sup>

<sup>29</sup> During Moyer's absences, her direct supervisor was Gallagher. During Demi's absence, her direct supervisors were individuals who have since died. For the period encompassing Weber's 1991 or 1992 absence, her immediate supervisor may have been Gallagher.

<sup>30</sup> Respondent put into evidence the doctors' notes which it had supplied to the General Counsel pursuant to an April 1997 subpoena which called for all of the doctors' notes submitted by Respondent's employees and in Respondent's files from January 1, 1995, to the present (see pp. 41-42 of Respondent's brief). Because Respondent was trying to show a regular practice of supplying doctors' notes, I infer that the unproduced doctors' notes which it put into evidence consist of all of the others which Respondent possessed.

<sup>31</sup> This exception was Gormley's absence between February 3 and 21, 1997.

<sup>32</sup> Clinton testified that as to the period of absence after which a doctor's note would be required, he selected the 7-day period because this was the period used by Bell Atlantic with respect to the bargaining unit employees represented by Respondent. In at least attempted support of this testimony, Respondent offered into evidence a Bell Atlantic document dated November 23, 1987, captioned "Attendance Improvement" and signed only by Bell Atlantic personnel, which states (sec. 4.32):

4.32 Medical Certification

Medical Certification is required on all absence in excess of 7 days. In addition, there are cases where management may feel the employee is not securing medical care early enough to keep illness at a minimum, or where there is reasonable doubt as to the validity of the illness report. In these cases the employee may be required to provide a statement from the employee's personal physician. If so, the employee should be notified of the requirement in advance of the

## H. Aftermath

In November 1996, an election for the office of Respondent's president was conducted among Respondent's members. The only presidential candidates on the ballot were Clinton and Gallagher. The tally showed that Gallagher had received a majority of the ballots cast, but the election was set aside by the United States Department of Labor. At the rerun election, the tally showed that Clinton had received a majority. At the time of the hearing in the case at bar (mid-May 1997), this result was under appeal.<sup>33</sup>

Meanwhile, Moyer applied for unemployment compensation benefits. An initial determination that she was eligible for such benefits for the week ending September 28, 1996, was appealed by Respondent on the grounds, *inter alia*, that she had engaged in willful misconduct by failing to supply adequate medical explanation for her absence from work and by failing to comply with instructions to return to work by August 12, 1996; and that she was not able to work during the period at issue. On December 3, 1996, in affirming the initial determination, the referee found that she was in fact able to and available for work during the weeks ending September 21 (a "waiting week") and 28, 1996. He further stated:

Findings of fact:

....  
4. Subsequent to June 27, 1996 the claimant was unable to report for work because she was suffering from depression and anxiety.

....  
6. On July 17, 1996, the employer mailed a letter to the claimant, which she received, instructing the claimant to provide the employer with medical documentation justifying her absence.

....  
7. In response to the aforesaid letter, on July 19, 1996 the claimant's therapist mailed to the employer a letter indicating that the claimant was receiving psychiatric treatment for anxiety and had been receiving such treatment since July 11, 1996

....  
10. On August 8, 1996, the employer mailed a letter to the claimant, which she received, informing the claimant that she must supply the employer with further medical

employee's next absence. The statement should indicate the diagnosis and prognosis.

The General Counsel's posthearing brief renews his motion at the hearing to reject this document, and to strike Clinton's testimony about this at least alleged 7-day policy, on the ground that Respondent failed to produce this document in response to the General Counsel's subpoena for all documents "showing the rules, regulations, policies and procedures governing the conduct and performance of employees of the Respondent during the period January 1, 1995 to the present." The General Counsel relies on *Bannon Mills, Inc.*, 146 NLRB 611, 614 fn. 4, 633-634 (1964). In view of my finding that Clinton did not in fact advise anyone about any 7-day period, and that Respondent did not in fact follow such a policy, I need not and do not reconsider my action at the hearing in denying the General Counsel's motion to strike this Bell Atlantic document and Clinton's testimony related thereto. I note that nothing in this document requires a statement of how long the employee had been under treatment, or of the treatment being received or contemplated.

<sup>33</sup> Neither party contends that Moyer's discharge was in any way motivated by the fact that for many years she had worked closely with Gallagher, Clinton's perceived intraunion political opponent.

documentation, or return to work by August 12, 1996. The claimant was informed that if she failed to do either of the aforesaid, she would be terminated.

....  
11. On August 8, 1996 the claimant supplied the employer with a letter from her doctor which indicated that the claimant was "Currently under my care for treatment of Major Depressive Disorder Single Episode Severe. Her current condition renders her temporarily incapable of performing her work responsibilities. It is estimated that with appropriate treatment she may return to work by September 9, 1996."

REASONING:

....  
[T]he medical documentation submitted by the claimant to the employer was adequate to explain why she was absent from work, especially in light of the practice established by the employer of not requiring medical documentation from other employees who were absent for extended periods of time for health reasons . . . the claimant was unable to return to work by August 12, 1996 as instructed by her employer because she was still under the care of her doctor.

Although not controlling as to the findings of fact or conclusions contained therein, the referee's decision has some probative value and is admissible into evidence. *Western Publishing Co.*, 263 NLRB 1110 fn. 1 (1982), and cases cited.

*I. Analysis and Conclusions*

The evidence shows that Respondent's president, Clinton, and Respondent's Eastern Region vice president, Carr, both believed that Moyer was "the driving force" behind the movement to organize Respondent's secretaries into the OPEIU. The evidence further shows that during November 1995 and February 1996 conversations limited to executive-board members, Clinton said that nobody was going to "embarrass the board by trying to join a union," and stated that Respondent's secretaries were very wrong indeed in thinking that if they were unionized their bargaining representative would automatically obtain for them the benefits of Respondent's bargaining agreements with Bell Atlantic; to which Carr added that Respondent's secretaries would have to "earn" such benefits. Because these statements by Clinton were made during the perceived privacy of an executive-board conference, I regard them as a more reliable reflection of Clinton's real sentiments toward the secretaries' OPEIU drive than his late May 1996 statements of neutrality at Respondent's convention (after the secretaries—unionization matter had been publicly brought up notwithstanding the agenda committee's March 1996 refusal to include it on the agenda) and to his own secretary, and his testimony at the hearing that it made no difference to him whether or not staff employees organized with a union, "in fact, I would be very happy to see that"; and that he would "prefer" that they be a union.

Moreover, the record shows that Respondent's tendered reasons for suspending Moyer's sick pay, and later discharging her, were pretextual. Moyer had been working for Respondent for nine and a half years, almost entirely under Gallagher. Gallagher credibly testified to the opinion that her abilities were "outstanding," and there is no evidence that any other member

of Respondent's management believed otherwise.<sup>34</sup> Further, there is no contention or evidence that before July 1996, she had ever been disciplined or even reproached for any reason. Moreover, under Respondent's customary practice, vice president Carter would have been primarily responsible for communicating with her about her illness, and Respondent's communications would not have been sent by certified mail. Nevertheless, Respondent's written communications to her about her illness were sent from the outset by certified mail, and they were sent by president Clinton, although he did not have daily contact with her in the course of her work.

Furthermore, the documents submitted by Moyer to Clinton in connection with her illness, Clinton's conduct after receiving them, and his testimony about their alleged deficiencies, belie the honesty of his testimony that such documents did not to his satisfaction deal with the health reasons which had led to her absence. Thus, on August 8, 1996—5 days before Clinton wrote her termination letter—Respondent received a letter from "Donald Levin, M.D.," whom Moyer had described to Clinton as a psychiatrist, stating that she was under his care for treatment of "Major Depressive Disorder Single Episode Severe. . . . Her current condition renders her temporarily incapable of performing her work responsibilities." This letter obviously complied with Clinton's previous instructions to Moyer about the kind of note she should supply about her illness.<sup>35</sup> The statement in Clinton's August 13 letter discharging Moyer and reiterated in his testimony, that Dr. Levin's letter was insufficient because it did not describe the type of treatment she was getting, how long she had been under treatment, or how long Dr. Levin had seen her, added requirements which before Moyer's discharge had never been specified to anyone, either by Clinton or in the Bell Atlantic Attendance Program. Moreover, the doctor's notes which Respondent offered into evidence show that it had accepted, over a period of years, doctor's notes which failed to describe the type of treatment the employee was receiving and gave only the dates during which the employee had been under the doctor's care; Moyer had advised Clinton on August 5 (the date of Dr. Levin's letter) that Dr. Levin was a psychiatrist and, in effect, that her appointment that day was her first appointment with him; and Kennedy's July 19 letter to Clinton had stated that Moyer had "been involved in psychiatric treatment since July 16, 1996, for the treatment of anxiety associated with perceived work stress. She will continue in treatment." Clinton's dismissal of the letter

<sup>34</sup> Rather similarly, unit 27 president LaVanga, who is a customer systems engineer, credibly testified to the opinion that Moyer was an "excellent worker." She was unit 27's direct staff contact, and almost always performed work for LaVanga during the one to three days a week when he visited Respondent's offices.

<sup>35</sup> Thus, in Moyer's discharge letter dated August 13, Clinton stated that Moyer had "been requested on several occasions to provide a doctor's note certifying your illness." Clinton's August 8 letter stated that his July 17 letter had requested "a doctor's note validating your illness and providing a detailed statement"; and that Kennedy's July 19 letter "is not a doctor's report and . . . does not constitute a medical opinion that you are physically or mentally disabled or unable to perform your regular duties." Clinton's July 31 letter stated that his July 23 and July 17 letters had asked "for verification of your illness, specifically a doctor's diagnosis." His July 23 letter stated that his July 17 letter had asked her to supply "a doctor's explanation of your illness. . . . If we don't get a detailed statement of your illness, we will have to consider disciplinary action." His July 17 letter requested "a doctor's note concerning your illness providing a detailed statement."

signed by Kennedy "Clinical Social Work" without following up on his office's undertaking to fax material to Kennedy for Moyer's signature on medical records release forms, his initial description of a "clinical social worker" as "somebody who, . . . I guess, listens to people," and his suspension of Moyer's sick pay without troubling to ascertain what such a professional worker in fact does, foreshadowed his dismissal of Dr. Levin's letter without following up on its alleged deficiencies.

Although Clinton testified that he believed Moyer was exaggerating her illness,<sup>36</sup> he did not testify in terms that he suspended Moyer's sick pay, and later discharged her, partly because he believed that she was not as sick as she claimed to be, and that she was in fact capable of working during part or all of the period of her absence on claim of health problems. Any such belief might well be dispelled by a honest layman's reading of Dr. Levin's letter stating that Moyer was under treatment for a "Major" and "Severe" "Disorder," and was "temporarily incapable of performing her work responsibilities." At the very least, such language would almost certainly prompt an honest reader to contact Dr. Levin with any questions which such language was thought not to answer. On the basis of the coding which Dr. Levin's letter attached to his diagnosis, I infer that if Clinton had taken advantage of the suggestion in Moyer's covering letter to "Please contact . . . Dr. Levin if you should have any questions" and had asked him the questions which (according to Clinton's testimony) Dr. Levin's letter left unanswered, Dr. Levin would have told Clinton that Moyer was suffering from a mental disorder which, before she consulted him, had consisted of at least 2 major depressive episodes each of which had lasted for at least 2 consecutive weeks and was preceded by symptoms which may have developed over a period of months; that during her illness, she was suffering from clinically significant distress or impairment in occupational areas of functioning; that nearly every day during this period, she may have been unable to function socially or occupationally during most of the day; that Moyer's disorder is associated with a mortality rate of up to 15 percent; and that if untreated, her illness would likely last 6 months or longer. (As previously noted, Dr. Levin's August 5 letter had said, "It is estimated that with appropriate treatment she may return to work by September 9, 1996," about 2-1/2 months after her absence had begun.)

In view of Clinton's opposition to the unionization of Respondent's secretaries, his belief that Moyer was the "driving force" behind their organizational efforts, LaVanga's action during the convention in favorably referring to the union movement among the staff secretaries with whom he dealt, Moyer's long tenure and outstanding abilities, and the pretextuous character of Clinton's explanation for his actions in suspending her sick pay and thereafter discharging her, the General Counsel has shown by a preponderance of the evidence that such conduct by Clinton was motivated by her union activity, and in no respect by the reasons advanced by Clinton. See *Whitesville Mill Service Co.*, 307 NLRB 937 (1992). Although Respondent's treatment of two other employees who signed OPEIU cards—Weber and Gormley—may have been proper as to Weber and generous as to Gormley (see *supra* part III(B)),

there is no evidence that Respondent knew or suspected their OPEIU activity. In any event, Respondent's treatment of Weber and Gormley does not disprove that Respondent discriminated against Moyer, the perceived "driving force" behind the OPEIU. See *Nachman Corp. v. NLRB*, 337 F.2d 421, 424 (7th Cir. 1964); *Cannondale Corp.*, 310 NLRB 845, 852 (1993). My finding that the only reasons advanced by Respondent for Clinton's action were wholly pretextuous necessarily means that Respondent has failed to sustain its burden, which the General Counsel's evidentiary showing imposes upon it, of showing that even if Respondent had not believed that Moyer was a leader in the organizational movement, Respondent would nonetheless have taken such action against Moyer for lawful reasons. *Bridgeway Oldsmobile*, 281 NLRB 1246 fn. 2 (1986). Accordingly, I find that by suspending Moyer's sick pay and thereafter discharging her, Respondent violated Section 8(a)(1) and (3) of the Act.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. OPEIU is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has violated Section 8(a)(1) and (3) of the Act by suspending employee Bernadette Moyer's sick pay on August 5, 1996, and discharging her on August 13, 1996.
4. The unfair labor practices described in Conclusion of Law number 3 affect commerce within the meaning Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that Respondent be required to cease and desist therefrom, and from like or related conduct, and to take certain affirmative action necessary to effectuate the policies of the Act. Respondent will be required to offer reinstatement to Bernadette Moyer to her former position or, if that position no longer exists, to a substantially equivalent position; and to make her whole for any loss of pay and other benefits she may have suffered by reason of the discrimination against her. Backpay shall be computed as described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, Respondent will be required to post appropriate notices. Because some of the OPEIU organizing activity which led to the discrimination against Moyer was directed to at least one employee in Respondent's Pittsburgh, Pennsylvania, office, posting will be required in that office as well as the Philadelphia office.

On the basis of these findings of fact and conclusions of law, and on the entire record, I issue the following recommended Order.<sup>37</sup>

#### ORDER

The Respondent, Communications Workers of America, Local 13000, AFL-CIO, its officers, agents, successors, and assigns, shall

<sup>36</sup> Moreover, Respondent's brief contends (pp. 2, 47) that Respondent entertained a good-faith belief that Moyer was feigning illness. However, during the unemployment compensation proceedings, Respondent apparently contended that Moyer was unable to work during the last full week of September 1996. Dr. Levin's August 5 letter had estimated that she could return to work by September 9.

<sup>37</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## 1. Cease and desist from

(a) Suspending employees' sick pay, discharging employees, or otherwise discriminating in regard to hire or tenure of employment or any term or condition of employment, to discourage membership in the Office and Professional Employees International Union, Local 14-32, AFL-CIO, or any other labor organization.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of the date of this Order, offer Bernadette Moyer full reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Bernadette Moyer whole for any loss of pay and other benefits she may have suffered by reasons of the discrimination against her, in the manner described in remedy section of this decision.

(c) Within 14 days of the date of this Order, remove from its files any reference to the unlawful suspension of sick pay to and the unlawful discharge of Bernadette Moyer, and within 3 days thereafter notify her in writing that this has been done and that such personnel actions will not be held against her in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in analyzing the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities in Philadelphia, Pennsylvania, and Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."<sup>38</sup> Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 5, 1996.<sup>39</sup>

<sup>38</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read, "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

<sup>39</sup> This is the date of the first unfair labor practice found, and the date on and after which Moyer's fellow employees were exposed to the

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## APPENDIX

## NOTICE TO EMPLOYEES

## POSTED BY ORDER OF THE

## NATIONAL LABOR RELATIONS BOARD

## An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT suspend your sick pay, discharge you, or otherwise discriminate in regard to your hire or tenure of employment or any term or condition of employment, to discourage membership in the Office and Professional Employees International Union, Local 14-32, AFL-CIO, or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Bernadette Moyer full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed.

WE WILL make Bernadette Moyer whole, with interest, for any loss of pay and other benefits resulting from the discrimination against her.

WE WILL NOT, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful suspension of Bernadette Moyer's sick pay, and to her unlawful discharge, and within 3 days thereafter, notify her in writing that this has been done and that such suspension and discharge will not be held against her in any way.

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effect of their commission. See *Syncor International Corp.*, 324 NLRB 8 (1997); *Aiken Underground Utility Services*, 324 NLRB 187 (1997). Cf. *Quebecor Printing Dickson, Inc.*, 323 NLRB 137 (1997); *Retlaw Broadcasting Co.*, 324 NLRB 138 (1997); *Industrial Construction Services*, 323 NLRB 1037 (1997); *Paperworkers Local 1048 (Jefferson Smurfit Corp.)*, 323 NLRB 1042 (1997); *King Broadcasting Co.*, 324 NLRB 332 (1997); *Trinity Transportation Corp.*, 323 NLRB 1091 (1997).